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ADOPTION OF THE REPORT OF THE COMMISSION ON THE SECOND PART OF ITS EIGHTEENTH SESSION

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Draft report

Addendum

Chapter ____

ACTIVITIES OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS

1. The Commission considered agenda item 7 at its 7th, 8th and 9th meetings, on 10 and 13 April 1991. It had before it the following documents:

(a) Report of the Secretary-General on the activities of the United Nations Centre on Transnational Corporations and the activities of the joint units established with the regional commissions (E/C.10/1992/9);

(b) Report of the Secretary-General on experience gained in technical cooperation activities involving assistance in formulating negotiation strategies (E/C.10/1992/10);

(c) Report of the Secretary-General on information requirements for assessing the performance of corporate obligations (E/C.10/1992/11);

(d) Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its tenth session (E/C.10/1992/12).

2. The Assistant Director in charge of Advisory and Training Services introduced the Secretary-General's report on experiences gained in technical cooperation activities involving assistance in formulating negotiating strategies.

3. In the discussion that followed, the delegations stressed the importance, value and effectiveness of the Centre's technical cooperation programme, despite its limited resources. Some of them expressed the hope that the recent restructuring of the Secretariat would not limit this effectiveness, but would enhance it.

4. Several delegations identified specific advisory and training services of which they were recipients and expressed their appreciation for the Centre's expeditious response to requests for assistance. Many delegations expressed interest in increased activities in technical assistance by the Centre. In this regard, a number of delegations made particular mention of certain programmes or activities, including assistance to entrepreneurs in developing countries; assistance in formulating privatization and deregulation programmes; and support of interregional, regional and subregional integration, as well as institutional development related to foreign investment.

5. Several delegations made specific suggestions to improve the delivery and reporting of the Centre's technical cooperation programme including the holding of regional round-tables for private investors and government officials to address issues concerning their relationship; expanding the Centre's work in the area of good governance with the aim of securing an international agreement on curtailing the use of illicit payments; and undertaking detailed project evaluations to assess expenditures incurred and benefits accrued.

6. In introducing the item as it related to the comprehensive information system on transnational corporation, an Assistant Director in charge of the information services noted the significance of effective collection and use of information in ensuring the implementation of contractual obligations by host countries and transnational corporations for the benefit of both parties involved. He also suggested that information was an important tool for ensuring transparency and accountability of international business operations. The Assistant Director drew attention to a number of specific suggestions, contained in the paper presented, aimed at making better use of the available information and enhancing national information frameworks. He said that the development of knowledge and skills to identify and to effectively use information, including data on financial, operational, environmental and developmental impact, could considerably narrow the existing information imbalance between developed and developing countries. Transnationalization reflected the fact that many companies operated within many different jurisdictions and legal frameworks. That was a cause of serious difficulty in tracking the performance of corporate obligations. In this regard the Assistant Director introduced, for the consideration of the Commission action-oriented recommendations to amend the situation. He assured the Commission that the Division would continue to serve emerging information needs of a variety of users.

7. A number of delegations expressed their satisfaction with the Centre's work in the collection and dissemination of information. In the view of these delegations, that activity benefited host countries, home countries and transnational corporations as potential investors, particularly by contributing to the negotiating capability of host countries. Some delegations recommended that the information function of the Centre be reinforced and further expanded in the interest of all member States.

8. Some delegations stressed that the objective and reliable information was of special importance for many business arrangements. Another delegation commended the timeliness and expeditiousness of the Centre's information services. Another delegation expressed its appreciation for the publications Transnational Business Information: A Manual of Needs and Uses and Transnational Corporations: A Selective Bibliography which had proved to be valuable to Governments and local users, including universities and research institutions. One delegation noted that document E/C.10/1992/9 indicated an obvious need on the part of the information system's users for macroeconomic information and for information on industries and individual companies, and called for a response to the requirement by expanding that segment of the information services.

9. Some delegations viewed the access to data and information as a factor contributing to the negotiating capacity of developing countries. Those delegations were of the view that document E/C.10/1992/11 was useful, informative and well presented. They also felt that the policy issues addressed in the Secretary-General's report, such as those related to transfer pricing, were of equal concern to both host and home countries. Several delegations were of the opinion that further work should be done by the Centre to collect, disseminate and analyse information on financial, operational, and development impacts of transnational enterprises, and the overall economic environment that would assist countries in developing and implementing appropriate regulatory frameworks.

10. A number of requests were also made with regard to future information activities of the Division, particularly to prepare manuals on information needs and reporting requirements; to assist and advise in locating sources of necessary information; to analyse the information flows in developing countries and advise on the ways to improve them; and to conduct seminars and workshops for officials and local directors of joint venture companies and other local entities.

11. The Assistant Director for Accounting and Information described the activities of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. Interest in that work had increased markedly owing to needs arising from the globalization of capital markets, the transition of planned economies to market economies and pressure for increased accountability in developing countries. Consequently, the Division had carried out, on behalf of the Group, an extensive programme of research and technical cooperation, and had prepared reports on global and national accounting issues, environmental accounting, privatization and accounting education for the tenth session of the Group, held in March 1992. In

addition, the Division supported a programme of technical cooperation in the former Soviet Union that included: producing a new chart of accounts to conform to international accounting standards, and training accounting professors and practitioners, as well as over 400 university students, in western accounting methods.

12. A number of delegates commended the Division for the high quality of its research and technical cooperation in the area of accounting. During the past year, the Division and the Group had made considerable efforts to ensure that the conditions for renewal of the Group's mandate were filled and, specifically, that the work would take on a more operational focus. One delegation commended the Division and the Group for their work on environmental accounting and the recommendations finalized by the Group during the year. The delegation emphasized that enterprises must improve information disclosure on their environmental activities, if their financial statements were to represent a true and fair view of the enterprise's performance. The Group was also commended for its work on privatization, as the document produced for the tenth session provided important guidance for countries in transition (E/C.10/AC.3/1992/5/Add.1-7).

13. Most of the delegations speaking on this agenda item commended the high quality of the Centre's research, technical cooperation and information services. A number of delegations expressed their hope that the recent integration of the Centre into the new Division on Transnational Corporations and Management would lead to an enhancement of its capacity to carry out its mandate subject and that it would be provided with the necessary resources to effectively meet its broad and multifaceted mandate.

14. One delegation, speaking on behalf of the group of developing countries, made a statement in which he expressed their appreciation of the Centre's substantive contribution to the debate on international economic relations. He said that the restructuring of the Secretariat in no way had affected the mandate of the programme on transnational corporations and the new Division on Transnational Corporations and Management should continue to serve as the focal point for all activities related to transnational corporations and foreign direct investment. The recent changes in the structure of international economic relations, he said, had created conditions that placed transnational corporations in a position to play a central developmental role. Developing countries could benefit from the evolving role of transnational corporations by improving their understanding of the operational and policy aspects of those entities, the area to which the new Division might especially contribute. He also urged the Division to strengthen and elaborate technical cooperation activities, particularly those relating to advisory services, expert assistance in contract negotiations, and to training and human resource development. This speaker also commended the work of the Centre on environment and climate change, and on the collaborative project with UNCTAD on the interrelationship between migration and foreign direct investment. He suggested that the practice be continued of panel discussions and presentations by expert advisers to assist the Commission in understanding various perspectives and issues relating to foreign direct investment and the activities of transnational corporations. The group of developing countries

also felt that the Centre, in view of its neutral role, could assist them in identifying experts for advisory services to develop appropriate fiscal regimes and investment strategies and, on request, to attract foreign direct investment.

15. One delegation from a developed country supported the goals of the programme on transnational corporations identified by the Director in his introductory statement, namely of assistance to Governments in supporting the functions of markets, mobilizing human resources, and encouraging entrepreneurial activities. This delegation urged the Secretariat to adopt as a benchmark for its work programme the criteria of supporting national policies and market-based approaches which would foster free enterprise and initiative and create climate conducive to investment. The same delegation suggested that the Department of Economic and Social Development relinquish environmental issues, including those related to environmental accounting, to those other United Nations bodies that had a mandate and more appropriate resources for addressing those matters. This delegation stated also that in the context of strengthening the host countries' capabilities in dealing with matters related to foreign investment no United Nations body should countenance a member State adopting performance requirements contrary to GATT rules. The delegation also reminded the Commission that no contracting process could substitute for a transparent and effective legal and regulatory regime.

16. Another delegation stated that the Centre's work was significant not only as a way of furthering the understanding of the phenomenon of transnationalization but as an effective contribution to international cooperation as it related to foreign direct investment. This delegation was particularly appreciative of the Centre's broad programme of technical cooperation, specifically in the areas of expert assessment of proposed laws and regulations on foreign direct investment, and provision of host countries with verified and reliable information on foreign investment partners and foreign investment regulations elsewhere in the world. Some delegations confirmed their approval of the scope of the programme on transnational corporations as formulated in the medium-term plan for the period 1992-1997, which they felt was extensive but realistic and responsive to interests of all the Member States.

17. A delegation from a least developed country spoke of the Centre's critical role in fostering an equitable and harmonious investment climate, particularly in the developing countries. In this regard he referred to the Centre's assistance to his country in finalizing a mining agreement with a transnational corporation and in reviewing existing national legislation for the mining and petroleum sectors. This delegation suggested that the Centre should give more attention to possible environmental implications of the activities of transnational corporations, particularly by strengthening the negotiating capacity of developing countries in this area.

18. One delegation from a country in transition spoke of the particular importance of the Centre's technical cooperation programme which, inter alia, addressed policies aimed at the reintegration of countries of Central and Eastern Europe into the world market; facilitated privatization efforts and accountancy development; assisted in the establishment of free economic zones and in the designing of appropriate regulatory frameworks on foreign direct investment. He expressed hope that the programme on transnational corporations would continue to help countries that were facing the unprecedented challenges of economic transformation, often associated with considerable social and political tensions. He particularly urged the Division to increase its efforts in the area of privatization by undertaking relevant research, collecting and dissemination of information on privatization laws and regulations, and undertaking training.

19. Most delegations recognized the importance of creating a favourable climate for foreign investment and underlined recent efforts undertaken by their respective Governments to that effect. In an increasingly interrelated world economy, those efforts involved coordination and cooperation of policies at the bilateral, regional and multilateral levels.

20. One delegation noted that in the area of international arrangements and agreements relating to transnational corporations the report of the Secretary-General (E/C.10/1992/8) had made several welcome suggestions for promoting dialogue and analysis by the Commission members, most notably on such aspects as privatization and competition, transfer pricing and corrupt practices in international transactions. The delegation stressed its support of the development of further work in those subjects within the context of the ongoing review of the work programme, to assure the relevance and pertinence of the work programme to the mandate of the Commission but also to the changing global scene. Another delegation, noting that the work on the code of conduct on transnational corporations was begun a decade ago, said that during that decade, developing countries had faced all the market problems that developed countries had experienced. In response to those problems the developed countries had established a regulatory infrastructure for transnational corporations. In his view, to ignore the development of the code would waste the efforts channelled into its drafting over the years. A balanced Code addressing the responsibilities of transnational corporations and Governments was necessary and should be adopted.

21. An expert adviser made a statement on behalf of the group of expert advisers. He said that throughout the years the Centre had developed a unique expertise, knowledge and professional skills which should not be lost or dispersed. The new Division on Transnational Corporations and Management, which fully maintained the mandate of the United Nations Centre on Transnational Corporations, should continue to serve as the focal point within the United Nations system on the issues related to foreign direct investment world-wide. Moreover, in the opinion of the expert advisers, the activities of the Division should be compatible in their dimension to the increased role of foreign direct investment and transnational corporations in both the world economy and international economic relations, and their impact on the global economic development.

22. A representative of Greenpeace International made a statement in which he strongly advised the Division on Transnational Corporations and Management to undertake a programme of work on the environmental impact of the activities of transnational corporations. In his view, it was essential that the international community take the necessary steps to hold transnational corporations accountable for their environmental and developmental practices.

23. The representative of the International Chamber of Commerce and the International Organization of Employers considered that the report of the Secretary-General contained a helpful review of the international framework within which transnational corporations operated. In particular, it recognized that far-reaching changes had taken place in that area, and called attention to the manner in which many States now interpreted and applied principles as they moved to liberalize previous restrictions. It called attention to a number of issues that were either being given new emphasis or being examined from different perspectives than in recent decades. In his view, however, the report could have made reference to the pioneering work of ICC and the international business community in that area with the adoption of the Guidelines for International Investment as early as 1974. Also, more emphasis could have been placed on the important role of the spreading network of bilateral investment treaties in the evolution of international standards on foreign direct investment. He questioned whether the rather strict categorization of issues into those which are settled and those on which consensus is still to be achieved holds in all cases, and questioned the need for further work on the code.

24. One Expert Adviser to the Commission observed that the world had entered a new phase of international economic relations, as a result of the fundamental changes taking place in many regions. Following those changes, there had been a deregulation of financial markets in many countries, thus, leaving more freedom for the market forces to find solutions and adjustments. But even if self-regulation could be sufficient in the majority of cases, it would not be sufficient in all situations. In those cases where the market rules did not follow the rules of elementary ethics certain international standards were needed to fill the void. Also in those few cases when enterprises did not follow market rules there was a risk of upsetting the confidence in the economic system and hurting other nationals, working people and other enterprises. In his view, with national markets becoming less regulated, the need for a global international instrument that helped to set international standards became more urgent. While acknowledging the existence of some international instruments in that area, the observer from ICC noted that the problem with those instruments was that they were neither universal nor comprehensive because they covered only a handful of States and, normally, a single issue. Therefore, in his view, there was still a vacuum, which should be filled with a global, comprehensive instrument at the United Nations level. Another expert adviser echoed these ideas and stressed that the Commission and the Secretariat had an important role to play in bringing to the attention of Governments the need for clear and more harmonized rules for both the conduct and the treatment of transnational corporations. In the opinion of this expert adviser, the work of the Secretariat on those issues had to continue.

25. The representative of the International Confederation of Free Trade Unions noted that the United Nations Code of Conduct was the only attempt to negotiate a comprehensive, balanced and universal framework for foreign direct investment. This was a principal activity of the United Nations Commission on Transnational Corporations and the former Centre and it should continue to be so under the new structure. He noted that it appeared that the only missing element in achieving such a framework was the political will to conclude negotiations for the code. Noting that the thematic relevance of the code has been questioned by some Governments, he expressed the view that such concerns did not hold since the code (because of the way it was negotiated) conferred political legitimacy and recognition to the role of foreign direct investment in development long sought by the business community. Moreover, he observed, the profound changes in the international economy reinforced, rather than obviated, the need for a code. Minimum standards regarding information disclosure, environmental and consumer protection, labour relations were necessary. Because such standards would be universally applicable, they would not discourage but rather enhance foreign direct investment. The Confederation never viewed the code as the last word in North-South relations but as a first step in a process of greater intergovernmental cooperation and in government-transnational corporations understanding. If the code negotiations were not resumed, the issues that the code dealt with would remain unresolved.

Action taken by the Commission

26. The Commission:

(a) Took note of the reports of the Secretary-General on the activities of the United Nations Centre on Transnational Corporations and the activities of the joint units established with the regional commissions (E/C.10/1992/9); on experience gained in technical cooperation activities involving assistance in formulating negotiating strategies (E/C.10/1992/10); on information requirements for assessing the performance of corporate obligations (E/C.10/1992/11), and the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its tenth session (E/C.10/1992/12);

(b) Requested the Secretary-General to take into account, in the future work of the Division on Transnational Corporations and Management as it relates to the programme on transnational corporations, the views expressed by delegations at its eighteenth session and to submit to the Commission at its nineteenth session a report on the implementation of the United Nations programme on transnational corporations, to account also for the activities of joint units established with the regional commissions.